

REMARKS/ARGUMENTS

Claims 1 and 3-12 are pending in the instant application. The title of the invention stand objected to. Claims 1 and 3-12 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918 in view of Kobayashi et al, U.S. Patent No. 4,512,486. Claims 1 and 3-12 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296 in view of Kobayashi. Claims 1, 8-10 and 12 are rejected under 35 U.S.C. 102 (b) as being anticipated by U.S. Patent No. 5,316,163. Claims 1 and 7-10 are rejected under 35 U.S.C. 103 (a) as being unpatentable over von Schuckmann in view of Kobayashi. The Examiner has indicated that Claims 3-6 are allowable if rewritten to overcome the rejections under non-statutory double patenting. Claim 1 has been amended to more particularly claim the instant invention. Claim 6 has been deleted and its limitations incorporated into claim 1. Claim 8 has been amended to simply recite a cap of claim 1. Applicant respectfully submits that none of the amendments constitute new matter in contravention of 35 U.S.C. § 132. Reconsideration is respectfully requested.

First, Applicant gratefully acknowledges the indicated allowability of claims 3-6.

The title of the invention is objected to as not being descriptive. The Applicant herewith has amended the title to read to "CAP WITH A PROTECTIVE PORTION FOR AN ENGAGEABLE MEMBER". Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1 and 3-12 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918 in view of Kobayashi et al, U.S. Patent No. 4,512,486. The rejection is respectfully traversed.

As noted above, the Examiner has indicated that claims 3-6 are allowable over the cited art, if re-written to overcome the rejections under non-statutory double patenting and including all the limitations of the base claim and any intervening claims. Applicant has amended claim 1 to incorporate the limitations of claim 6. Additionally claim 8 has been re-written to recite a cap according to the (amended) claim 1.

The present invention claims a cap for a container which includes a cover member that provides a removable portion to allow access to a surface of a stopper. The removable portion is surrounded by a protective portion extending about a user-engageable member which allows for the removable portion to be removed. The protective portion comprises a wall which extends generally about the periphery of the engageable member, extending to a height in line with, or above, the upper surface of the engageable member. Claim 1 has now been combined with former claim 6, stated by the Examiner to be allowable subject matter, specifying that the cap has an inclined surface to assist drainage thereof when the cap is in an upright position.

The '918 patent claims recite a package comprising a container with a mouth, a stopper inserted into the mouth, and a cap overlying the stopper. The cap includes a removable portion which can be removed to gain access to the stopper, and an engageable member for operation by a user to remove the removable portion. The cap includes a wall extending generally about the periphery of the engageable member to protect it from accidental operation of entanglement. The wall has at least one opening therethrough. The '918 patent fails to claim or suggest an inclined surface which assists in drainage when the cap is in an upright position.

Kobayashi discloses a cap for a container but does not disclose, teach, or suggest an inclined surface which assists in drainage when the cap is in an upright position.

As neither nor the '918 patent claims nor Kobayashi, either alone or in combination, disclose, teach or suggest a wall which extends to a height in line with, or above, the upper

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surface of the engageable member or an inclined surface which assists in drainage when the cap is in an upright position, Applicant respectfully submits that the present invention is patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1 and 3-12 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296 in view of Kobayashi. This rejection is respectfully traversed.

The '296 patent claims are directed to a cap for a container comprising a moulding. The moulding comprises a retaining portion for engaging the container and retaining the cap thereon, a frangibly removable portion which is removable to expose at least partly a closure member for the container, and a user engageable member operable by a user to remove the removable portion. The cap includes a protective portion for the engageable member provided radially outwardly thereof. The protective portion is formed separately of the moulding and is attached thereto, such that the protective portion comprises a wall which extends generally about the periphery of the engageable member. The cap claimed by the '296 patent fails to recite or suggest an inclined surface which assists in drainage when the cap is in an upright position. Furthermore, it is clear that Kobayashi fails to correct this deficiency of the '296 patent claims.

Applicant therefore respectfully submits that as neither the '296 patent claims nor Kobayashi, either alone or taken together, disclose, teach or suggest an inclined drainage surface on the cap, the present invention is patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

In conclusion, Applicant respectfully submits that as claim 1 has been demonstrated to be allowable, claims 3-5 and 7-12 are similarly allowable as each depends from allowable claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

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Claims 1, 8-10 and 12 are rejected under 35 U.S.C. 102 (b) as being anticipated by von Schuckmann (US 5,316,163). Applicant respectfully submits that this rejection is obviated by the amendments stated by the Examiner to provide a patentable claim.

Claims 1 and 7-10 are rejected under 35 U.S.C. 103 (a) as being unpatentable over von Schuckmann in view of Kobayashi. Applicant respectfully submits that this rejection is obviated by the amendments stated by the Examiner to provide a patentable claim.

In view of the amendments and remarks hereinabove, Applicant respectfully submits that the instant application, including claims 1, 3-5 and 7-12, is patentably distinct over the prior art. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert F. Chisholm', written over a horizontal line.

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